

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

v.

SUPERIOR MANUFACTURING, ET AL.

APPELLANT,

RESPONDENTS.

DOCKET NUMBER WD74370
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 21, 2012

Appeal From:

Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Three: Thomas H. Newton, P.J., James M. Smart, Jr., and Victor C. Howard, JJ.

Attorneys:

Laura E. Elsbury, Jefferson City, MO, for **appellant**.

David Gregory Brown, Columbia, MO, for **respondents**.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

APPELLANT,

v.

SUPERIOR MANUFACTURING, ET AL.,

RESPONDENTS.

No. WD74370

Cole County

Before Division Three: Thomas H. Newton, P.J., James M. Smart, Jr., and Victor C. Howard, JJ.

Superior Manufacturing, Inc. is a Missouri corporation formed by Respondents Kevin W. Gross and Wendy D. Gross. After the receipt of complaints and a preliminary investigation, the enforcement section of the Securities Division of the Office of the Secretary of State submitted a petition for an order to cease and desist and an order to show cause why civil penalties and costs for securities violations should not be imposed against Superior Manufacturing, Inc. and the Grosses.

The Commissioner of Securities issued an order to cease and desist and to show cause why civil penalties and costs should not be imposed, which was sent to the Grosses by certified mail. Notices and copies of the cease and desist order were returned “unclaimed” to the Commissioner. That same day, the Commissioner was served with substitute process pursuant to section 409.6-611(b), RSMo (cum. supp. 2007), and notices of the service and copies of the process were sent to the Grosses at their last known address. Those notices of service were returned “refused” to the Commissioner. The Secretary of State filed the Commissioner’s final order with the Cole County Circuit Court and sought a garnishment in execution of the judgment. The garnishments/ executions were issued and served.

The Grosses filed a motion to quash the garnishment and vacate the underlying judgment claiming their rights had been violated because they had no notice and no opportunity to defend against the assessments. At a hearing on the matter, the Grosses provided no evidence, but the Secretary of State proffered a certified copy of the Commissioner's record, which the court refused to receive. The court took the matter under advisement. The court entered an order vacating the judgment and quashing the garnishment, from which the Secretary appeals.

REVERSED AND REMANDED.

Division Three holds: The trial court erred in: (1) shifting the burden of proof to the Secretary to prove that service of process was received by the Grosses, and (2) rejecting the evidence proffered by the Secretary to form a proper record.

(1) The trial court failed to take into account the presumption of validity of the final order in this case. The final order found that the service of process on the Commissioner was legally sufficient to effect service of process on the Grosses. The final order of enforcement was subject to collateral attack, but the burden of proof in the collateral attack was on the Grosses.

(2) The court failed to receive the Commissioner's certified record. The Administrative Procedures Act requires a party seeking judicial review to file the record or to request that the agency file the record with the court. The Grosses did not file a copy of the Commissioner's record with the trial court. The Secretary attempted to proffer the certified documents from the Commission's file that would have clarified matters, but the trial court, in error, rejected the evidence.

On remand, the court may receive evidence, including any evidence to be presented by the Grosses, and must receive and consider the record of the administrative proceeding into evidence pursuant to section 536.130.

Opinion by James M. Smart, Jr., Judge

August 21, 2012

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